

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the matter of	)	
	)	
Reexamination of	)	WT Docket No. 05-265
Roaming Obligations	)	
Of Commercial Modifications	)	
Radio Service Providers	)	
	)	
Automatic and Manual Roaming	)	
Obligations Pertaining to	)	WT Docket 00-193
Commercial Mobile Radio	)	
Services	)	

**REPLY COMMENTS OF UNITED STATES CELLULAR CORPORATION**

James R. Jenkins  
Vice President  
Legal and External Affairs  
United States Cellular Corporation  
8410 West Bryn Mawr  
Chicago, IL 60603  
773-864-3167

Peter M. Connolly  
Holland & Knight LLP  
2099 Pennsylvania Avenue, NW  
Suite 100  
Washington, DC 20006  
202-862-5989

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United States Cellular Corporation ("USCC") hereby files its Reply Comments in the above-captioned proceeding. As will be shown below, the comments filed by other carriers in this docket demonstrate the need for a strong and enforceable FCC policy requiring the provision of automatic roaming.

**Introduction and Summary**

In its Comments, USCC argued that the FCC should reconsider its roaming rules in light of the increasing concentration of the wireless industry as a consequence of the recent combinations of major carriers. In light of the diminishing number of "national" carriers, the continued availability of "automatic" roaming will be a crucial safeguard for competition.

Mergers among the larger carriers have limited the competitive alternatives available to consumers who want reasonably priced national calling plans. The FCC has permitted these mergers to occur because it has judged that the mergers themselves do not reduce *retail* competition below acceptable levels. Critically, however, without a continuation of existing

roaming rights and their extension into new services as they are introduced, the choices currently available to consumers may be limited even further, frustrating the FCC's competition policy objectives. If smaller carriers cannot assure their customers that they can roam on other carriers' networks, customers who desire national plans may choose to leave smaller carriers and purchase such plans from national carriers. Over time, the market would "tip" toward the national carriers, increasing market concentration and further limiting consumer choice. The FCC need not and should not allow this to happen.<sup>1</sup> It should intervene now, not to impose new regulatory requirements, but rather to help preserve automatic roaming and to prevent further market concentration and attendant consumer harm.

In our comments, USCC proposed that the FCC adopt an enforceable policy statement requiring that wireless carriers continue to make their networks available to the customers of other carriers for "automatic" roaming on reasonable terms and conditions. We further argued that this principle should be applied not only to today's roaming services, but should also apply to future services enabled by the deployment of 3G and 4G networks. We concluded, however, that a policy statement, as opposed to a rule, would best reconcile the continuing need to maintain roaming availability and industry competition with an appropriate level of network autonomy and flexibility.

In their respective comments, the national carriers on the one side and the mid-sized and small carriers on the other offer dramatically different pictures of the status quo. Generally speaking, the national carriers argue that automatic roaming at reasonable prices is currently

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<sup>1</sup> It is worth recalling that the parties to these recent mergers assured the FCC that their mergers would increase, rather than decrease competition, and that they would increase competition in part by improving and expanding roaming on their networks. As discussed in USCC's Comments in this docket, filed November 28, 2005, pp. 5-8, Sprint and Nextel and Alltel and Western Wireless both justified their proposed mergers by stressing improved roaming opportunities on their networks and by relying on the existence of small and regional competitors to whom roaming is critical.

freely available to all wireless carriers. Thus, they maintain, there is no need for any new Commission rules or policies concerning roaming. However, according to the smaller carriers, discrimination and denial of roaming opportunities are rampant. The smaller carriers charge that they either cannot obtain roaming contracts with larger carriers or are charged exorbitant roaming rates, both of which are contrary to the public interest, necessitating FCC action.

These divergent perspectives demonstrate the wisdom of the approach suggested by USCC. By adopting a carefully crafted, enforceable policy statement, the FCC can make an effort to preserve what the national carriers depict as the current state of affairs, while at the same time postponing more intrusive intervention until it is clear it is needed. If the national carriers are correct that they are currently making automatic roaming ubiquitously available, a continuation of their current practices should not provoke future complaints to the FCC. If complaints do arise, the FCC can adjudicate them in the context of specific factual circumstances, with the benefit of more and better documented evidence. Over time, through this process of case-by-case adjudication, the FCC can fine-tune its general requirement for automatic roaming and allow its approach to change as needed with changes in the market. There is no need for the FCC to reach all of these nuanced judgments now, on the basis of the thin factual record developed in this rulemaking. Indeed, this cautious, case-by-case approach to policy development has been adopted in any number of contexts where the proper path is unclear or subject to change over time, including in the enforcement of our nation's antitrust laws.

**I. USCC's Proposed Policy Appears Compatible with the Current Practices of Most National Carriers.**

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Generally speaking, the national carriers oppose any form of automatic roaming requirement for any segment of the CMRS market.<sup>2</sup> However, distinctions can be drawn between the positions of Verizon Wireless, T-Mobile and Cingular on one side and Sprint Nextel and Nextel Partners on the other. The first three national carriers assert that they currently make reasonably priced roaming automatically available to carriers with technically compatible networks and express their intent to maintain this policy into the future. By contrast, the latter two oppose the idea that there is any right for other carriers to roam on their networks, except where it suits their own commercial advantage.

Verizon Wireless argues that the Commission should not impose an automatic roaming rule unless it is clear that the market forces are not sufficient to ensure the widespread availability of competitive roaming services and stresses that roaming is now generally available.<sup>3</sup> Verizon Wireless notes that competition is strong in the CMRS marketplace, exerting a downward pressure on roaming rates and ensuring that all carriers that wish to enter into automatic roaming agreements can do so on reasonable and non-discriminatory terms.<sup>4</sup> Verizon Wireless also argues that the Commission's existing roaming policies have fueled investment and development of new technologies and provided incentives for the larger carriers to spread wireless services to rural America.<sup>5</sup> There is, in short, no market failure and no basis for the Commission to impose any additional roaming regulations.

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<sup>2</sup> See, e.g. Comments of Verizon Wireless; Sprint Nextel Corporation ("Sprint Nextel"); Nextel Partners, Inc.; T-Mobile; USA, Inc. ("T-Mobile"); and Cingular Wireless LLC ("Cingular").

<sup>3</sup> Verizon Wireless Comments, pp 17-23.

<sup>4</sup> Ibid., pp 1-14.

<sup>5</sup> Ibid., p 9.

However, Verizon Wireless also stresses that it is and will be willing to enter into reciprocal and symmetrical agreements with rural providers and states that it does not require rural providers to pay more for roaming than Verizon Wireless pays the rural providers.<sup>6</sup> Verizon Wireless expresses its opposition to any form of mandatory home roaming, i.e., requiring carriers to offer roaming agreements to facilities based providers in the same geographic market and urges that the FCC not adopt any roaming regulation that favors smaller or rural providers.<sup>7</sup> Finally, Verizon Wireless argues that any roaming rules adopted by the FCC should not apply to 2.5 G and 3 G digital networks.<sup>8</sup> In short, Verizon Wireless claims there is a well functioning free market in roaming in which small and mid-sized carriers may roam freely on its network and the public interest is served by declining prices.

As a roaming partner of Verizon Wireless, USCC believes that it has, on balance, accurately described its own current approach to roaming issues. However, it should be noted that Verizon Wireless' current roaming policy for 1 and 2G services may not be continued indefinitely and its policies are not necessarily the same as those of other carriers. Thus, its current policies are not an argument against a policy which requires that all carriers adopt such practices. USCC would however note that we agree in part with Verizon Wireless that carriers should have some discretion with respect to home roaming arrangements, so long as a carrier is not using the denial of home roaming as a tool to coerce or even eliminate a competitor. We also caution the FCC to be careful in defining what constitutes a “home” market. Carriers have different footprints and the fact that two carriers serve overlapping geography should not be a pretext for excluding roaming in nearby locations. We suggest that the FCC use the smallest practicable units of geography for this purpose – perhaps CMAs or even counties.

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<sup>6</sup> *Ibid*, p 6.

<sup>7</sup> *Ibid*, pp. 17-19.

<sup>8</sup> *Ibid*, p. 22.

USCC takes strong exception to Verizon Wireless' contention that roaming requirements should not be applied to enhanced 2 1/2, 3, and 4G digital networks. The services provided by these networks now, and will over time comprise an increasing portion of most carriers' revenue streams. The seamless functioning of these services will depend as much on roaming capabilities as do traditional voice services. Failing to include these networks in a strong and enforceable roaming policy would leave that policy woefully inadequate to its purpose and increasingly so in the future.

T-Mobile also asserts there is no need for additional FCC roaming requirements, as it has voluntarily entered into roaming agreements with all other carriers which have networks compatible with its GSM network and it also expresses a willingness to enter into reciprocal and mutually beneficial business relationships with roaming partners of all sizes.<sup>9</sup> T-Mobile argues the Commission should reject any automatic roaming rule or any form of non-discrimination requirement regarding roaming agreements on the theory that regulatory intervention into roaming relationships would harm consumers.<sup>10</sup> It also maintains that the Commission should not regulate the terms or conditions of roaming agreements, or hinder wireless carriers' technical flexibility by requiring them to take action to facilitate another carrier's ability to roam on its network.<sup>11</sup> Free competition in the CMRS marketplace, T-Mobile argues, has resulted in technical innovations in the products and services which wireless carriers use to differentiate themselves from each other and will do in the future as new technologies develop.<sup>12</sup> However, T-Mobile does acknowledge that particular carriers may engage in unlawful discrimination or anti-competitive activity relating to roaming in violation of the Communications Act. Moreover,

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<sup>9</sup> T-Mobile Comments, pp. 3-5.

<sup>10</sup> T-Mobile Comments, pp. 13-16

<sup>11</sup> Ibid, pp. 16-18.

<sup>12</sup> Ibid, pp 19-21.



it believes the Commission could and should address that behavior through complaint proceedings or enforcement actions, rather than by imposing broad roaming requirements on the entire industry.<sup>13</sup>

USCC is not a GSM carrier and cannot speak to T-Mobile's actual roaming practices. However, assuming they have been reported accurately, T-Mobile would have no legitimate basis for opposing a flexible policy statement which would essentially require all carriers to carry out its current policies, though USCC would perhaps disagree with T-Mobile on what would constitute a reasonable accommodation by national carriers to a smaller carrier's roaming needs. However, as best we can determine, what USCC proposes is for T-Mobile's and Verizon Wireless' claimed existing practices to become FCC policy.

USCC does not agree, however, with T-Mobile's conclusion that new technology is materially alleviating the impediments to roaming on networks with different technologies. Cost, time-to-market, and the market imperative of offering a wide selection of handsets make it impractical to incorporate multiple technologies in most handsets. For example, adding GSM roaming capability to a CDMA handset would be complex, expensive and difficult. And we do not see this changing in a substantial way. In our view, industry consolidation is a much stronger force toward the constriction of the roaming market than are technological developments toward the expansion of the market.

Cingular, a GSM carrier, also opposes any new automatic roaming requirements and argues that in the absence of FCC requirements, automatic roaming has flourished. In addition, Cingular also argues that the allowing market forces to operate freely without regulation has resulted in low roaming rates and near nationwide coverage for most carriers.<sup>14</sup> Cingular agrees

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<sup>13</sup> Ibid, pp. 18-19.

<sup>14</sup> Cingular Comments, pp. 10-12.

with T-Mobile that the imposition of a mandatory automatic roaming requirement would harm carriers' incentives to provide facilities based coverage, innovative rate plans and better quality roaming services at low costs.<sup>15</sup>

Cingular's comments, however, reflect considerable and unjustified contempt for smaller carriers. Cingular contends that smaller carriers have changed their position on the need for an automatic roaming requirement only because they have lost roaming revenue as rates have declined and larger carriers have built out their systems. Cingular dismisses smaller carriers' legitimate concerns about the impact of carrier consolidation and the loss of potential roaming partners.<sup>16</sup> Cingular also suggests that smaller carriers have sometimes failed to upgrade their systems to meet the needs of the larger carriers.<sup>17</sup> Cingular, however, does state that they are willing to, and have, entered into multiple roaming agreements with smaller carriers, and certainly with respect to "inbound roaming" it is not clear from the record of this proceeding that Cingular's actual roaming practices differ much or at all from the practices of Verizon Wireless and T-Mobile.

We believe that the policy USCC proposes would also be compatible with those practices and, to the extent it was not, that Cingular should modify its practices. USCC also agrees with Cingular that the FCC should not necessarily require "reciprocal" roaming agreements, though we believe such agreements to be desirable as a general matter and the absence of reciprocity between carriers is a warning sign that should be considered in the light of the enforceable policy statement we have proposed. The FCC should ensure that small, mid-sized and regional carrier customers have an opportunity to roam nationwide. Moreover, the absence of an explicit

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<sup>15</sup> Ibid, pp. 18-26.

<sup>16</sup> Ibid, pp. 6-9.

<sup>17</sup> Ibid, p. 18.

reciprocal roaming obligation should not be viewed by the larger carriers as a license to abuse their “bottleneck” market power by imposing exorbitant and unreasonable rates.

## **II. The FCC Should Reject The Position of Sprint Nextel and Nextel Partners.**

The comments of Sprint Nextel and Nextel Partners reflect a different approach than those of the other national carriers. They unwittingly demonstrate why FCC action is urgently necessary.

Sprint Nextel arrogantly asserts that it is not required to enter into roaming contracts with any rural and small wireless carriers if such contracts are not in its own economic interest. Moreover, they argue that their practice of "asymmetrical pricing," i.e., their alleged right to charge small and rural carriers whatever they want, is consistent with the operation of a competitive market under their version of "economic theory."<sup>18</sup> Sprint Nextel's legal position is that there is no basis in American law or policy to require "competitors" to assist each other.<sup>19</sup> As explained below, this is a mistaken reading of the law. Moreover, Sprint Nextel appears to define "competitor" very broadly, including in that category all wireless licensees other than Sprint Nextel whether or not they actually compete in Sprint Nextel's own markets.

In sum, Sprint Nextel rejects any basis for FCC intervention, even on a limited basis, to preserve the competitive roaming environment that currently prevails or to preserve consumer choice. Their comments present the uncompromising view that they have a right to negotiate roaming contracts with whomever they wish, and to charge small carriers wishing to roam on their networks a premium price, without respect to their own costs or the impact of these policies on market concentration, competition, and consumers. They are, however, profoundly wrong, both concerning antitrust law, and the FCC's powers to act to preserve competition.

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<sup>18</sup> Ibid, pp. 14-17.

<sup>19</sup> Ibid, pp. 18-21.

Sprint's core legal argument is that, "it is a long-standing principle of American jurisprudence and economic theory that as a general matter, there is 'no duty to aid competitors.'"<sup>20</sup> For this proposition, Sprint Nextel cites the Supreme Court's recent decision in Verizon v. Trinko, 540 U.S. 398, 411 (2004). But Sprint Nextel overstates and misapplies the principle enunciated in that case.

Trinko did not hold that there can never be a duty to aid competitors. Indeed, the Supreme Court stated explicitly, that "under certain circumstances, a refusal to cooperate with rivals can constitute anticompetitive conduct and violate Section 2 of the Sherman Act." 540 U.S. at 408. In particular, the Supreme Court left standing its earlier holding in Aspen Skiing Co. v. Aspen Highlands, 472 U.S. 585 (1985), which held that a firm can violate Section 2 of the Sherman Act if it voluntarily cooperates with a competitor, granting it access to its network, and then later cuts off such access under circumstances making it appear that it is sacrificing short term profits in order to maintain or enhance monopoly power in the long run. The roaming situation can be analogized to Aspen Skiing. National carriers have entered into automatic roaming agreements with smaller carriers voluntarily. If the national carriers now end such access without adequate business justification, there may well be a basis for antitrust intervention, even under Trinko.<sup>21</sup>

Also, there is a question about who "competes" with whom. Sprint Nextel argues that it should have no duty to assist "competitors." For the reasons just discussed, the FCC should not accept this blanket statement, but even if it did, who are Sprint's "competitors"? If there were no roaming requirements, smaller carriers would not be in a position to compete for customers

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<sup>20</sup> Ibid, p. 17

<sup>21</sup> Sprint thus misstates the law when it says that "Antitrust courts have imposed a duty to deal only in the narrow circumstances where a monopolist controls an essential (or "bottleneck") facility." Ibid. p. 18. As explained above, antitrust courts have also imposed a duty to deal in the Aspen Skiing type situation.

seeking national calling plans. By requiring automatic roaming, the FCC would not be requiring Sprint to assist current “competitors” for these customers. Rather, the FCC would be creating new competition, to the benefit of consumers.

More fundamentally, it is important to keep in mind that in regulating the wireless industry prospectively, the FCC is not limited to applying the comparatively narrow principles that are used to determine whether an alleged monopolist has engaged in past conduct that perpetuates its monopoly and gives rise to treble damages relief. If the antitrust laws prohibit certain practices and subject those who violate those prohibitions to treble damages, the FCC can prohibit them too, but the FCC is not limited to prohibiting only those practices. Stated another way, Trinko was an antitrust case, not a case under the Communications Act. If the Supreme Court decides (as it did in Trinko) to narrow the sweep of Section 2 of the Sherman Act, that does not mean that the Supreme Court has narrowed the sweep of the FCC’s prospective regulation under Communications Act, or that the FCC has to narrow the scope of such regulation. In particular, the FCC can adopt policy positions that are designed to avoid a slide toward increasing market concentration and monopoly, where it would be necessary to invoke antitrust remedies.

USCC also disagrees with Sprint Nextel’s underlying assumption that the market for roaming is and will continue to be a purely competitive market. As we will discuss later in our comments, roaming is a wholesale input to the retail wireless business and the market for roaming services is sharply segmented on the basis of technological compatibility.

Nextel Partners' comments reflect the same extreme point of view as that adopted by Sprint Nextel. Nextel Partners makes the seemingly reasonable assertion that it and Nextel have a right to make the strategic decision to establish a national footprint through network

deployment and not through roaming agreements.<sup>22</sup> Nextel Partners says it will enter into roaming agreements with other carriers only after weighing a number of questions, including the technical "challenges" and costs of such agreements, the resources such agreements might "divert away from network buildout," network management issues and the value to Nextel Partners' customers of roaming on the other carrier's network. Nextel Partners concludes by saying that it will only enter into a roaming contract if the revenues generated by the proposed arrangement would make it a profitable venture.<sup>23</sup>

Nextel Partners' comments are intended to justify its refusal to enter into any roaming contract with SouthernLINC, the main carrier able to roam on its iDEN network. Nextel Partners further justifies this conduct by arguing that the Commission should continue to provide incentives for carriers to build out their systems and by asserting that an automatic roaming rule is also unnecessary because consumers can gain access to other systems in its areas by purchasing prepaid wireless service from other networks.<sup>24</sup>

Sprint Nextel and Nextel Partners' comments are profoundly self-serving and antithetical to the ideas that (a) consumers benefit from interconnected networks; and (b) the FCC may require carrier cooperation and interconnection to further consumer welfare. The FCC should reject these comments, which carry with them the threat of destruction of a national, interconnected wireless network.

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<sup>22</sup> Nextel Partners' Comments, pp. 8-11.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid., pp. 8-11.

### **III. Small and Regional Carriers Comments Provide Valuable Support for FCC Action, but Fail to Justify a Prescriptive Rule.**

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The comments of small, mid-sized and regional carriers make many valuable points demonstrating the need for Commission action, but in our view fall short of justifying the immediate imposition of a prescriptive automatic roaming rule.

Leap Wireless, for example, makes the excellent point that there is a distinction between the "retail market" in which the CMRS industry is competitive and the "regional markets for wholesale roaming" which are now dominated by a duopoly or monopoly for each of the major digital wireless standards, CDMA (Verizon Wireless, Sprint Nextel), GSM (Cingular Wireless, T-Mobile) and iDEN (Sprint Nextel), which duopolies and monopoly may undercut effective competition.<sup>25</sup> Leap alleges that its attempts to provide roaming capabilities to its subscribers have been impeded by the larger carriers, who have refused to negotiate reasonable terms with Leap even through their technologies are compatible with Leap's and even through they have available capacity. Leap also charges that the national carriers charge exorbitant rates for automatic roaming, with the average wholesale roaming rates charged by such carriers to unaffiliated carriers exceeding, in some cases by four times, the retail rates those carriers charge their own customers.<sup>26</sup> Leap asks the Commission to intervene by adopting rules to protect consumers from the effects of such practices. Specifically, Leap urges the FCC to require

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<sup>25</sup> Comments of Leap Wireless International ("Leap"), pp. 6-11. Sprint is thus also mistaken in asserting that "obviously, no wireless carrier possesses a monopoly." Sprint Comments, p. 18. Sprint's assertion appears to be based on its expert, Gregory Rosston's, conclusion that the relevant market for antitrust purposes is "CMRS services overall" and that "roaming is not a relevant antitrust market." (See Rosston Analysis at 12) Dr. Rosston and Sprint both focus on the market for CMRS services to consumers, argue that it is competitive, and then argue from that that there can be no competition problem in any market for roaming services. However, roaming services are an "input" into the provision of CMRS services. Like Leap, USCC believes there can be and is an antitrust "market" for roaming services in addition to the antitrust market for CMRS services. And it is obviously possible that a carrier could have a virtual monopoly in the market for roaming services (if it were the only CDMA carrier in a given market, for example).

<sup>26</sup> Ibid., pp. 13-16.

facilities-based carriers to furnish automatic roaming services on the request of another carrier unless the facilities based carrier can demonstrate to the Commission that its technology is incompatible or that there is no available capacity in its network. Leap also maintains that facilities based carriers should be prohibited from discriminating against similarly situated carriers in the rates charged or the terms and conditions of roaming service. In markets in which there are three or fewer facilities based carriers from which the carriers seeking automatic roaming service could obtain such service, Leap asks that the FCC prohibit a facilities based carrier from demanding rates for automatic roaming that exceed a carrier's average retail revenue per minute in that market.<sup>27</sup>

USCC would note that its roaming experiences with the national carriers have been somewhat more positive than those reported by Leap. We also believe that there might be potential enforcement difficulties involved in comparing the rates carriers charge their own customers (under varying service plans) with roaming rates. However, Leap's basic point, namely that carriers should permit roaming to customers of technically compatible systems at reasonable rates, is entirely valid. The rates Leap states it is being charged are obviously unreasonable. The FCC should make clear that such disparities would be considered unreasonable and should enforce that component of its policy through an expedited complaint process.

Metro PCS stresses the anti-competitive effect of wireless mergers of the past year, which have created an increasing size disparity between the national carriers and the local and regional carriers seeking roaming rights.<sup>28</sup> Metro PCS also makes the point that barriers to entry in the wireless industry have increased. Shortages of spectrum, difficulties of securing and licensing

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<sup>27</sup> Ibid, pp. 15-17.

<sup>28</sup> Comments of Metro PCS Communications, Inc. ("MetroPCS"), pp. 5-10.



antenna sites and the sheer cost of establishing competitive nationwide wireless systems have meant that smaller carriers have had no choice but to enter into roaming agreements in order to provide nationwide service.<sup>29</sup> The size disparity between national and small, regional and mid-sized carriers has led to unfair negotiation outcomes. Metro PCS urges that the Commission adopt a strong statement of principles which will ensure that roaming service will be provided in every instance where it is technically feasible. Roaming rates must be cost based and nondiscriminatory and Metro PCS urges that carriers must be prohibited from providing more favorable roaming arrangements to themselves and their affiliates than to unaffiliated third parties. Carriers must also be prohibited from providing preferential arrangements to non-facilities based competitors, i.e. resellers and MVNOs, while refusing to enter into arrangements with facilities based competitors.<sup>30</sup> Metro PCS also urges that roaming agreements be made public so that requesting carriers will have the information they need to negotiate fair agreements and avoid being discriminated against. Carriers should also have the right to opt into roaming arrangements on the same terms and conditions as other carriers, including the same rates as are offered to others.<sup>31</sup>

USCC concurs that roaming must be provided by the national carriers on a fair and non-discriminatory basis, but questions whether there is a need for roaming negotiations to be treated in the same way as interconnection negotiations pursuant to Section 251 and 252 of the Communications Act, complete with publication of agreements and "opting in." USCC would also not include within the policy any requirements regarding resellers and MVNOs, as wholesale/retail distinctions raise complex issues which should be handled separately. At least

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<sup>29</sup> Ibid, pp. 10-13.

<sup>30</sup> Ibid, pp. 14-16.

<sup>31</sup> Ibid, pp. 16-19.

for the present USCC believes that better results will be obtained by the FCC applying a policy statement in the context of specific complaints regarding roaming.

SouthernLINC understandably urges a strong automatic roaming requirement, as it has evidently had a very difficult time negotiating roaming agreements with Nextel (prior to its current merger with Sprint) and with Nextel's partially owned affiliate Nextel Partners. It notes that to this day, it has no roaming agreement with Nextel Partners and only a limited, non reciprocal roaming arrangement with Nextel, for which SouthernLINC says it must pay rates which substantially exceed those typical in the industry.<sup>32</sup> SouthernLINC argues that Nextel's and Nextel Partners' practices demonstrate the existence of a market failure with respect to the availability of roaming for iDEN carriers.<sup>33</sup> SouthernLINC stresses the importance of wireless service availability by reference to the recent occurrence of large scale emergencies such as hurricanes Katrina and Rita in its region.<sup>34</sup> SouthernLINC suggests that if a carrier charges wholesale roaming rates which exceed its own lowest prevailing retail rates, its roaming rates should be presumptively considered unjust and unreasonable.<sup>35</sup>

SouthernLINC also suggests the FCC adopt a rule requiring all CMRS carriers to provide automatic inbound roaming to any requesting technologically compatible carrier at reasonable rates on reasonable and non discriminatory terms and conditions. The Commission should also modify its complaint process and adopt evidentiary presumptions regarding claims made under Sections 201 and 202 of the Act which reflect the public interest in roaming availability and develop appropriate procedures to ensure that its actions and decisions under this process are

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<sup>32</sup> Comments of SouthernLINC Wireless ("SouthernLINC"), p. 3.

<sup>33</sup> Ibid, Pp. 3-4, 11-15.

<sup>34</sup> Ibid, pp. 21-25.

<sup>35</sup> Ibid, pp. 46-47.

timely and meet the demands of a fast moving wireless market.<sup>36</sup> Lastly, the Commission must adopt measures for enforcing automatic roaming obligations, including but not limited to a streamlined complaint process, forfeitures and enforceable orders compelling carriers to enter into and conduct good faith roaming negotiations.<sup>37</sup>

USCC largely agrees with SouthernLINC's proposals to strengthen the FCC's complaint procedures and considers it urgent that the FCC act to stop what has evidently been the unfair treatment to which SouthernLINC has been subjected, but remains skeptical about incorporating any rate "presumptions" into the FCC's roaming policy, beyond a requirement of reasonableness and a relationship to carrier costs.

Centennial's comments are the closest in tone and substance to those of USCC and we accordingly support them.<sup>38</sup> Centennial stresses the importance of roaming to developing a ubiquitous nationwide wireless network. It notes that total roaming revenues have grown but only as a result of explosive growth in total subscribers and monthly usage and not as a result of roaming rates, which have declined.<sup>39</sup> Centennial notes that roaming is becoming a required feature of service, and is not a potential profit center. Accordingly, Centennial urges that the current manual roaming requirement be upgraded to include an automatic roaming requirement. Centennial believes that any subscriber of any system should be able to roam on any compatible system as long as a subscriber's home system has offered the roamed upon system reasonable roaming terms, including reciprocal roaming and a willingness to maintain technical compatibility.<sup>40</sup> Centennial opposes heavy handed regulation and proposes that the FCC simply

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<sup>36</sup> Ibid.

<sup>37</sup> Ibid., pp. 51-53.

<sup>38</sup> See, Comments of Continental Communications Corp.

<sup>39</sup> Ibid.

<sup>40</sup> Ibid., pp. 4-7. We would note that we believe larger carriers should not be forced to have their customers roam on any particular system, and hence oppose any "reciprocity" requirement in that sense.

declare that any reasonable automatic roaming proposal should be accepted and perhaps provide some general guidelines on what constitutes reasonable terms. Centennial urges that the parties be allowed to work out details on a good faith basis with the FCC available to adjudicate any disputes which carriers cannot resolve, but notes that there is still an underlying roaming obligation based on Sections 201(a) and (b) of the Act which require that service be provided "upon reasonable request therefore" and on "reasonable terms,"<sup>41</sup> points with which we agree.

Rural Cellular Association ("RCA") urges the FCC to adopt an automatic roaming rule. Specifically, it suggests that the FCC adopt rules which impose good faith, reciprocal bargaining obligations on CMRS carriers to require that voice, data and other wireless services offered over their networks be available automatically where the networks are technically compatible and roaming between carriers is technologically feasible. RCA recommends adoption of good faith negotiating standards, like those set forth in the Satellite Home Viewer Improvement Act of 1999 (SHVIA), which are now applicable to broadcasters and multi-channel video programming distributors. In the event of violations of the good faith negotiation standard, CMRS providers would be subject to the FCC's complaint processes.<sup>42</sup> RCA suggests that the reason why its members have changed their position on automatic roaming, which they formerly opposed, is the recent consolidation of the wireless industry. RCA's comments also contain an important discussion of an additional basis for FCC jurisdiction over roaming. Section 332 of the Act, they argue, gives Congress plenary authority over the interstate and intrastate practices of CMRS practices, including roaming.<sup>43</sup> USCC concurs on this point, which supports both the FCC's authority and obligation to act in this proceeding.

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<sup>41</sup> *Ibid.*

<sup>42</sup> RCA Comments, pp. 6-7.

<sup>43</sup> RCA Comments, pp. 7-10.

The Rural Telecommunications Group ("RTG") and the Organization for the Protection and Advancement of Small Telecommunications Companies ("OPASTCO") also request that the FCC mandate automatic roaming in rural areas and establish rules to ensure that small and rural carriers are able to enjoy the same roaming arrangements that large CMRS carriers share with one another.<sup>44</sup> They urge the establishment of a "Tier IV" level of small wireless carriers (a category to which mid-sized carriers such as USCC would not belong) to which its requested roaming rule would apply. RTG/OPASTCO is the only filer to refer to specific instances where large carriers have allegedly abused their market power in forcing rural carriers into roaming agreements that are little more than contracts of adhesion.<sup>45</sup> They allege that the rural carrier's customers must pay an unreasonable premium to roam on nationwide networks and that national carriers pay less than the rural carriers' costs, allegedly, for the national carriers' customers to roam on rural networks. RTG/OPASTCO state that in urban and suburban markets carriers' roaming agreements are reciprocal and bear some relation to carriers' costs. However, such agreements, they stress, are generally not available in rural areas where national carriers have an overwhelming market advantage. RTG/OPASTCO also note the consolidation of the industry, which has left rural carriers with a decreasing number of roaming partners and suggest that mandated roaming will prevent large CMRS carriers from denying their own customers access to vital services in rural regions.<sup>46</sup>

USCC again concurs in the need to protect small carriers' right to roaming contracts on reasonable terms but rejects RTG/OPASTCO's attempt to carve out special legal rights for the smallest carriers. We also oppose any absolute right to require carriers to sign "outbound" roaming contracts. If carriers may provide for their own customers' service and roaming needs

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<sup>44</sup> RTG/OPASTCO Comments, p. 2.

<sup>45</sup> Ibid., pp. 11-13.

<sup>46</sup> Ibid.

without signing an outbound roaming contract with another carrier, whether "rural" or not, that should not be a cause for Commission intervention *unless an anti-competitive motive can be demonstrated*.<sup>47</sup> The FCC should endeavor to protect the right of small carriers' customers to roam on the systems of larger carriers at reasonable rates. The FCC's guide should be the public interest, and the public interest demands that carriers' customers be able to use their wireless phones wherever they travel on reasonable terms and conditions.

### **Conclusion**

The comments filed demonstrate a need to protect wireless customers' right to roam using current and future generations of technology, but to do so in a manner which preserves flexibility

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<sup>47</sup> Inbound roaming represents an important revenue stream for many small carriers. Consolidation and the need to roam with a technologically compatible carrier (CDMA or GSM or iDEN) may create a monopsony in some roaming markets. A large carrier could use its power as the single roaming customer in a market to force its small competitor to sell out or make other competitive concessions to the serious detriment of consumers.

and limits the burdens of regulation. Accordingly, USCC reaffirms and reiterates our proposal that the FCC adopt an enforceable policy statement requiring automatic roaming on the terms described in our Comments and these Reply Comments.

Respectfully submitted,

United States Cellular Corporation

By: James R. Jenkins, PC  
James R. Jenkins  
Vice President  
Legal and External Affairs  
United States Cellular Corporation

By: Peter M. Connolly  
Peter M. Connolly  
Holland & Knight LLP  
2099 Pennsylvania Avenue, NW  
Suite 100  
Washington, DC 20006  
202-862-5989

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